IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH.

Criminal Appeal No.467-SB of 1994
Date of decision: 24.04. 2007

Ved Parkash.

-----Appellant.

Vs.

State of Haryana.

-----Respondent.

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL

Present: Mr. V.D. Sharma, Advocate for
Mr.R.S. Tacoria, Advocate
for the appellant.

Mr. J.S. Toor, Addl. A.G., Haryana.

Adarsh Kumar Goel, J.

The appellant challenges his conviction under Section 363 IPC, for which, he has been sentenced to undergo imprisonment for three years and to pay fine of Rs.1,000/-, in default, to undergo further simple imprisonment for three months.

Case of the prosecution is that 'K' (PW-12) daughter of Ram Pal and niece of Banarsi Dass (PW-11) was a student of tenth class. The appellant used to misbehave with her. PW-11 Banarsi Dass, who was working in Irrigation Department and his brother Ram Pal lodged protest with the father of the appellant Risal Singh who assured them that he will advise his son not to misbehave. PW-11

Banarsi Dass brought 'K' to his house in village Murtzapur to avoid the appellant, but the appellant continued to follow her. He was living in Village Naina. In spite of advice of Banarsi Dass, he did not desist from doing so. On 25.04.1993, the appellant was found talking to 'K', but he ran away after seeing them. On the same day, Smt. Rajpati wife of Banarsi Dass was sleeping in her room after taking dinner. She got up at 2.00-3.00 A.M. and found 'K' absent from her cot. She woke up Banarsi Dass and told him that 'K' was missing. In spite of search, she was not found. Ram Pal was informed. When she was not found for several days, on 7.5.1993, a complaint (Ex.PK) was lodged with the police station, to the effect that 'K' had been kidnapped by the appellant. 'K' was recovered from the custody of the appellant on 19.6.1993 at Bus Stand, Kaithal by ASI Tara Chand. After investigation, the appellant was sent up for trial.

The prosecution examined PW-1 Shri Nand Kishore, Judicial Magistrate, regarding statement under Section 163 Cr.P.C., PW-2 Ram Singh, Head Master, regarding school leaving certificate (Ex.PD), PW-3 Dr. Jagmal Singh, Medical Officer, who conducted medical examination of the accused, PW-4 Dr. Sunita Jain, Medical Officer, regarding medical examination of 'K', PW-5 Patwari Sat Pal, regarding site-plan (Ex.P1), PW-6 Baljeet Singh, regarding date of birth (Ex.PJ), PW-7 SI Shamsher Singh, Investigating Officer, PW-8 MHC Zile Singh, regarding affidavit (Ex.PN), PW-9 Constable Satish Kumar, regarding affidavit (Ex.PO), PW-10 HC Puran Mal, Investigating Officer, PW-11 Banarsi Dass, complainant, PW-12 'K', prosecutrix and PW-13 ASI Tara Chand, Investigating Officer.

The accused denied the prosecution allegations and stated that he was falsely implicated on account of party faction. He examined Surta Ram, Chowkidar (DW-1), Hari Chand, Head Teacher of Government Primary School, Naina (DW-2).

After considering the evidence on record, the trial Court held that 'K' was proved to be more than 16 years of age and she had consented for the sexual intercourse, but 'K' was kidnapped from the lawful guardianship and offence under Section 363 IPC stood proved against the appellant. Out of the entries of date of birth, entry Ex.DA was proved by the defence showing the date of birth to be 1.3.1977 and the same was accepted to be the correct one. The other dates of birth mentioned were 5.1.1978 (Ex.PJ) and 4.5.1977 (Ex.PD), as per birth entry/school register.

Learned counsel for the appellant submitted that the prosecutrix should be treated to be above the age of 18 years and thus, offence of kidnapping was not made out. He further submitted that there was delay of 13 days in registration of the FIR and thus, case of the prosecution was not proved.

There is no merit in the contention raised. Even according to the defence evidence, the date of birth of the prosecutrix was 1.3.1977 and thus, on the date of occurrence on 25.4.1993, she was a minor.

Delay in lodging of the FIR could not be enough to throw out the case of the prosecution. The prosecutrix has been duly examined and even though inference of consent has been drawn from her conduct, it stands established that she was taken away by the

accused from the lawful custody of her guardian. Considerations in examining the effect of delay, in sexual offences, are different from other cases and in such cases, family members are reluctant to go to the police station on account of reputation of the family being involved. Reference may be made to the observations of the Hon'ble Supreme Court in ***State of Punjab v. Gurmit Singh*** AIR 1996 SC 1393:-

> "7…..The courts cannot overlook the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged. …."

The offence of kidnapping stands established notwithstanding the consent of the prosecutrix. It has been established that the accused had been chasing the prosecutrix in her village, on account of which, she was shifted to other village. In the circumstances, it could not be held that the minor left her parental home completely uninfluenced by any inducement from the accused. The accused completely denied the prosecution allegations. PWs have clearly stated that it was accused who was after the prosecutrix and it was as a result of his efforts that the prosecutrix accompanied him. It is well settled that if the accused induces a minor to leave her guardian's protection, the offence of kidnapping will be made out.

Reference may be made to ***Thakorlal D. Vadgama*** AIR 1973 SC 2313**,** wherein it was observed:-

> "9…..The two words "takes" and "entices", as used in Section 361 IPC are in our opinion, intended to be read together so that each takes to some extent its colour and content from the other. The statutory language suggests that if the minor leaves her parental home completely uninfluenced by any promise, offer or inducement emanating from the guilty party, then the latter cannot be considered to have committed the offence as defined in Section 361 IPC. But if the guilty party has laid a foundation by inducement, allurement or threat, etc. and if this can be considered to have influenced the minor or weighed with her in leaving her guardian's custody or keeping and going to the guilty party, then prima facie it would be difficult for him to plead innocence on the ground that the minor had voluntarily come to him. If he had at an earlier stage solicited or induced her in any manner to leave her father's protection, by conveying or indicating or encouraging suggestion that he would give her shelter, then the mere circumstance that his act was not the immediate cause of her leaving her parental home or guardian's custody would constitute no valid defence and would not absolve him...."

Even if the prosecutrix was easily persuaded to go with the accused, it will not affect the case of the prosecution. In ***State of Haryana v. Raja Ram*** AIR 1973 SC 819, it was observed as under:-

> "9….The fact that the prosecutrix was easily persuaded to go with Raja Ram would not prevent him from being guilty of the offence of kidnapping her. Her consent or willingness to accompany Raja Ram would be immaterial

> and it would be equally so even if the proposal to go with Raja Ram had emanated from her. There is no doubt a distinction between taking and allowing a minor to accompany a person. But the present is not a case of the prosecutrix herself leaving her father's house without any inducement by Raja Ram who merely allowed her to accompany him."

For the above reasons, offence under Section 363 IPC is clearly established against the accused.

Coming to the question of the sentence, it has been seen that the accused was 19 years of age at the time of offence. He has been facing proceedings for the last 14 years. Having regard to the circumstances of the case, ends of justice will be met if the substantive sentence awarded to the appellant is reduced to RI for one year.

Ordered accordingly.

The appeal is dismissed.

April 24, 2007 **(ADARSH KUMAR GOEL)**
ashwani **JUDGE**